



# MEMORANDUM

Date: November 7, 2011

To: The Honorable Chairman and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

Re: Financing Continuing Improvements for the Joint Justice/Municipal Courts Complex

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## ATTACHMENTS

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| Attachment 1. | Excerpts from the 2004 Bond Implementation Plan.                 |
| Attachment 2. | Current Design Site Plan and Floor Plans for Levels 1 through 8. |
| Attachment 3. | Sundt Construction, Inc. September 24, 2011 Schedule of Values.  |

The Honorable Chairman and Members, Pima County Board of Supervisors  
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I. Introduction

The County has been in the process of implementing a 2004 bond project to develop a County/City Joint Justice/Municipal Courts Complex (JJMCC).

For a variety of reasons, present bond funding allocated is insufficient to complete the proposed facility, and it is unlikely a new bond authorization could supplement funding for the project until 2013 or 2014. However, construction of the new facility could begin as early as this December if the City and County make certain funding commitments to assure each party will pay its fair and proportionate share of the cost of proceeding with phased construction of the facilities, with the possibility that certain portions of advanced funds could be returned proportionately to the City and County if a future bond issue provides funding to complete the facility.

The purpose of this report is to explain the present option of constructing the facility in two phases; specifying the total cost for Phase One, which is the Tower Shell, Central Plant and limited sitework; determining the cost in excess of available bond funding and the proportion each party should bear in this cost if Phase One proceeds to construction; and how Phase One excess costs could be financed by the City and County. It is important a decision be made regarding whether the City is willing to participate in paying their fair share of Phase One construction costs no later than November 15, 2011 as the County has entered into a Construction Manager at Risk (CMAR) contract with Sundt Construction, Inc., and Sundt has established a Guaranteed Maximum Price (GMP) for Phase One, based upon competitive bids, which expires shortly thereafter.

Sundt has completed Tier 1 of a two-tier agreement. Tier 1 included working with the design team to establish a GMP for the Tower Shell, Central Plant and limited sitework. A critical component in the development of the GMP was establishing a clear understanding of what interior core build-out and exterior sitework would be included under the definition of Tower Shell. The CMAR's advice and expertise was paramount to the development of this initial scope of work to avoid remedial or duplicative costs at the time of future interior improvements. Tier 2 of the agreement would be entering into the actual construction phase of the limited sitework, Tower Shell and Central Plant should the GMP be acceptable to the County. The CMAR solicitation was authorized and approved in such a manner as to allow the future interior build-out and Parking Garage construction to be contracted concurrently with Sundt Construction should that delivery method prove advantageous to the County. We would be ready to execute a construction contract December 1, 2011 for the Tower Shell, Central Plant and limited sitework.

Without some City agreement to pay their share of excess bond costs for limited sitework, Tower Shell and Central Plant construction, the County will be unable to proceed with

development of the new JJMCC, and the project will be held until bond funds are secured in the future, which may be in 2013 or 2014.

Since this project is very complex, this report summarizes major project details, timelines and funding.

II. Original Scope and Purpose of the 2004 Bond Question

The original scope and purpose contained in the Bond Implementation Plan Ordinance for the 2004 election is attached (Attachment 1). The original scope called for improvements totaling \$91,000,000 for a joint courts complex of approximately 337,000 square feet. It is important to note the originally planned size of the building was the primary basis for estimating cost. The Courts Tower and Central Plant presently planned for implementation total approximately 295,000 square feet but had, through the Joint Court Complex Management Team, ballooned to 470,000 square feet, including prosecution and defense office space – something that was unaffordable. To satisfy prosecutor and defender space needs of the County, the County in 2007 purchased the Bank of America Plaza, a 195,000 square foot building, for \$24.1 million financed as part of a series of Certificates of Participation with principal and interest payments paid over 15 years.

III. Formation of the Joint Court Complex Management Team

To assist in refining the scope of improvements and to involve court users in the beginning stages of architectural programming, the Joint Court Complex Management Team (JCCMT) was formed. The JCCMT includes judicial and administrative representatives of the Superior, Justice and Municipal Courts; the City General Services Division, the County Facilities Management Department and AECOM, the architect for the project. (The original architectural firm for the project was DMJM, which was acquired by AECOM.) This team, in cooperation with the Facilities Management Department, developed an architectural program for the building size and function. The JCCMT remains active in reviewing, planning and architectural design for building implementation. I am providing a copy of this report to the JCCMT for their review and comment regarding whether the City and County should proceed with constructing the new complex using a two-phase approach as discussed herein. I have asked the JCCMT for a recommendation regarding how to proceed with this project.

IV. Authorized Bond Funding

Authorized bond funding has been spent to implement the project. This funding has been spent for planning, architectural design, land acquisition and assemblage, and relocation of utilities as well as archaeological mitigation and clearance as shown in the table below.

**Table 1**  
**Joint Courts Complex Expenditures to Date**

<b>Description</b>	<b>Cost</b>
Planning and Design	\$11,600,000
Acquisition of State-owned Land	2,090,000
Acquisition of Other Lands	2,525,000
Archaeology	16,800,000
Demolition and Abatement, including Utility Relocation	1,632,000
<b>Total</b>	<b>\$34,647,000</b>

**V. Project Design Status**

Construction documents for the revised project design were 50 percent complete on April 20, 2011 and were 95 percent complete for the purpose of establishing the GMP for the Tower Shell and Central Plant on July 22, 2011. The site plan and floor plans for each level are included as Attachment 2 to this report. Design development milestone dates are shown below.

**Table 2**  
**Design Development Milestones**

<b>Activity</b>	<b>Date</b>
Original Architect/Engineer Contract	08/15/05
Initial Program Analysis Complete	12/08/06
Initial Schematic Design Complete	06/18/07
Initial Design Development Complete	01/30/08
Project Placed on Hold	July 2008
Alternative Study Initiated	01/06/09
Alternative Study Completed	April 2009
Alternative Scheme Re-design Initiated	08/04/09
35 Percent Design Development Completed	07/15/10
100 Percent Design Development Completed	09/20/10
50 Percent Construction Documents Completed	04/20/11
95 Percent Construction Documents for Tower Shell and Central Plant GMP Establishment	07/22/11
Receipt of Contractual GMP	09/08/11

The design for the JJMCC prior to January 2008 was based on a detailed study conducted by consultants using those factors common for judicial growth, including anticipated population growth, demographics, frequency of appeals and other socio-economic factors.

This analysis, coupled with the anticipated implementation of various changes in courtroom technology as approved by the State, were the driving factors in the design of the 470,000 square foot proposal. As mentioned previously, authorized funding was not commensurate with this design.

The predicted indicators gathered during a period of tremendous regional growth and cost escalation have changed dramatically due to the continued sustained economic downturn. Consequently, the JCCMT reexamined those indicators starting in January 2009, and directed the project consultant, AECOM, to redesign the facility to serve the courts' needs based on more accurate reflection of the new economic and growth reality. The resultant design includes a phased approach allowing for a 120,000 square foot future addition to accommodate 12 to 16 additional courtrooms. This new design successfully utilized all the functional relationships, consolidation and adjacencies achieved in the initial design and maximized site utilization, while still allowing for a constructible future building addition.

The current design, inclusive of all interior build-out, has been estimated by an outside cost estimating firm at \$77,000,000. The project fund balance available for construction spending is approximately \$17,000,000. Recognizing the shortfall is significant, both the City and County would be well served to consider the financial options available to aggressively capture the extremely favorable construction market and proceed with the project. It is with this mindset that the concept of phasing the construction into Tower Shell with future Tenant Improvements was developed.

#### **VI. Basis of City/County Cost Sharing**

The 2004 bond issue authorized \$76 million in bonding for the JJMCC. County General Obligation bonds are paid for by all taxpayers throughout the County; and, since the County unincorporated area and City of Tucson assessed value comprise 84.5 percent of the tax base, it is appropriate to not allocate cost of the facilities to specific benefitting parties – either the City or the County. However, when expenses exceed bond revenues, such expenses should be shared in proportion to the benefit received by each party. In this case, the City will functionally occupy and benefit from 58 percent of the building space, with the County occupying 42 percent. Therefore, any capital construction cost in excess of authorized bonds should be borne by each party in proportion to their space utilization of the facility.

Under a separate contract, the County will design and construct the parking structure to support the JJMCC. The parking structure includes one level of below grade secure parking designated for judges and seven levels of at or above grade parking. The parking



structure design accommodates over 750 vehicles and approximately 8,000 square feet of multi-tenant retail such as sandwich shops, coffee vendors, etc.

The estimated cost of the parking structure, including necessary sitework, is approximately \$20 million. The financing of this structure will be independent of constructing the court building itself and will be financed by the County based on anticipated revenues from the parking structure. Parking within the new structure will be on an employee contract basis for all Court staff, both City and County, and will match those monthly rates for surrounding County garage facilities. Additional fee-based parking will be available for public use, including annual, monthly, daily and hourly options. The parking structure will also be available after business hours and on weekends for special event parking and access to downtown businesses and venues, including the Warehouse District development.

#### **VII. Use of Remaining Bond Funds**

As discussed previously, after all expenses are paid for land acquisition, utility relocation, street abandonment and land assemblage, archaeological clearance and mitigation, as well as architectural design, approximately \$17 million in bond funds remain available for construction. Other remaining bond funds are earmarked for remaining necessary expenses to support completion of the project, including permits, construction testing, utility fees, courtroom furnishings and audio/visual technology. The \$17 million is insufficient to construct the project; in fact, it is insufficient to construct the site improvements and the building shell, let alone tenant improvements. However, any remaining bond funds will be dedicated to project construction. It should also be noted that a previous bond amendment anticipated the present funding shortfall and allocated \$12 million for courtroom improvements within the Superior Court Building, providing some judicial court trial capacity improvements that were originally contemplated in the 2004 bond authorization.

#### **VIII. Options for Construction Implementation**

Two options are available regarding implementing project construction. Given the investment made to date for land acquisition assemblage, utility relocation, architectural design and archaeological clearance, the project is poised for construction. Unfortunately, the amount of remaining bond funds from the original 2004 authorization is insufficient. The Pima County Bond Advisory Committee (BAC) reviewed and considered the project implementation progress made to date and deemed the project important to complete for significant public benefit. At their meeting of May 21, 2010, the BAC authorized an additional initial allocation of \$50 million to essentially complete the project, supplementing

the 2004 authorization. At this time, the future authorization is not in sync with the completion of design and the ability to proceed with facility construction; hence, the two options below for construction of the facility. It is likely any voter consideration of further bond funding will not occur until November 2013.

The first option is to construct the facility in two phases: the first phase being building shell construction, which would essentially complete the shell structure, some limited site improvements and the Central Plant, followed thereafter by tenant improvements that would build out offices and courtrooms as designed. Under this two-phase approach, construction would begin on the Tower Shell and Central Plant in December 2011 with completion of this phase in June 2013. Phase Two, consisting of the tenant improvements, would commence immediately upon issuance of voter-approved bonds and would be complete approximately one year later.

The second option would be to put the project on temporary hold until a new bond authorization is approved by the voters to finance both the shell and tenant improvements. Since a future bond election will occur no sooner than November 2013, funding would not be available for building construction until 2014 or 2015, which would delay building completion to 2018. Using a construction cost escalation of four percent per year, the financial impact to further delay the project could potentially range from \$6 to \$9 million.

#### IX. Phasing Cost and Timing

If the first phase of the Tower Shell, Central Plant and site development are started late this year, it is likely the next phase of construction, the completion of tenant improvements within the Tower Shell, could begin no sooner than late 2013 and require approximately one year to complete. Phase One Tower, Shell and Central Plant cost is estimated at approximately \$48 million (see Attachment 3). With \$17 million in remaining bond funding, the balance of Phase One Cost would be \$31 million. The cost of tenant improvements (Phase Two) is estimated at \$28 million, and the cost allocation of Phase Two improvements is identical to the use square footage of the overall project, which 58 percent City of Tucson use and 42 percent Pima County use.

Given it is unlikely a bond election will be held until November 2013, it is very possible that at least the Phase Two tenant improvement cost of approximately \$28 million would be bond cost without the use of interim financing that will be required for Phase One. Hence, the full cost of Phase Two could be financed with General Obligation bonds of the County if the voters approved same. There is, however, always the possibility the voters would reject such a question, and Phase Two would have to be paid directly by the City and County via other financing mechanisms.

**X. Cost Implications for the City and County to Proceed with the Joint Justice/Municipal Courts Complex Development**

Without bond funding, the maximum cost to the City and County for proceeding with Phase One and Phase Two construction improvements would be as listed below assuming a typical Certificate of Participation and/or lease/purchase 15-year amortization schedule at an interest rate of four percent.

**Table 3**  
**City/County Phase One and Two Costs**

<b>Jurisdiction</b>	<b>Phase One Cost</b>	<b>Annualized Cost at Four Percent Over 15 Years</b>
City of Tucson	\$17,400,000	\$1,565,000
Pima County	12,600,000	1,133,000
<b>Totals</b>	<b>\$30,000,000</b>	<b>\$2,698,000</b>

The lease/purchase financing could be arranged such that at any time, the City or County could pay their portion of the Certificate of Participation debt should cash flow and budget conditions allow or if a future bond issue funding allocation would allow the Certificate of Participation to be paid off for both the City and County.

**XI. Advantages and Disadvantage of the Phased Improvement Option**

Generally, the advantages fall into two categories. First is the early delivery of an operational joint court facility that will alleviate overcrowding in the County Justice Court system and replace an obsolete building for the Tucson Municipal Court. Second is the anticipated significant construction savings because of a very competitive market in the construction industry. Hundreds of construction jobs will be created for this project, including onsite labor and second- and third-tier suppliers and manufacturers. Since December 2008, Pima County Facilities Management has contracted for over 25 vertical construction projects estimated in excess of \$80 million. The actual contracted amount was slightly over \$53 million, a significant savings of nearly 34 percent as a direct result of the extremely competitive construction market.

Under the delayed implementation awaiting bond funds, it is likely construction costs will increase due to market conditions in 2015 and increased commodity prices. Commodity prices are likely to increase substantially by the earliest implementation timeframe if the joint courts project waits for a bond authorization since the earliest construction timeframe



would be mid 2014 to 2015. It is estimated commodity prices alone for the total project build-out between now and that period could increase by as much as \$6 to \$7 million. In addition to the vulnerability of cost escalation, delayed implementation carries several other project risks, including any changes to the Building Code(s), which could negatively impact costs; loss of key personnel either internal or external (consultants) intimately familiar with the project design; loss of both County and City operational efficiencies inherent in the new facility; increased criteria required to achieve the Leadership in Energy & Environmental Design (LEED) Silver rating; and those quantifiable gains realized by all entities achieved through the improved and prompt delivery of judicial services.

An advantage to the County of proceeding now is to offset current Justice Court rental courts being incurred at La Placita Village. The County leases approximately 17,500 square feet in La Placita for Justice Court purposes. Given current lease payments, if the County delays implementation of the JJMCC and the Justice Courts are unable to relocate by 2014 and such is delayed to at least 2018 or 2019, the County will incur an additional approximate \$3.3 million in rental costs. These additional rental costs would substantially offset the annualized debt cost for proceeding with Phase I JJMCC improvements.

The primary disadvantage of proceeding with a two-phased, early implementation is the fact that both the City and County could be obligated to repay the advance cost using operating funds as opposed to overall County secondary property taxes if the two-phased construction was amortized under a typical Certification of Participation and/or lease/purchase financing arrangement over a 15-year period. At the present interest rate of four percent, the proportional annual cost of Phase One would be \$1,133,000 for the County at 42 percent occupancy and \$1,565,000 for the City at 58 percent occupancy.

## **XII. Detailed Cost Analysis of Sundt's Construction Manager at Risk Process**

Based on the Tier One Agreement, using the CMAR project delivery method, Sundt Construction established the GM) for the Tower Shell, Central Plant and limited sitework. Parallel cost estimates and financial modeling performed by both Sundt and Parametrix (County hired third party estimating firm) estimated the total building cost, including all tenant and site improvements, as \$77 million, excluding the Parking Garage. Sundt's GMP for the Phase One Tower Shell, Central Plant and limited site improvements is \$48 million. Notwithstanding unanticipated commodity or labor spikes beyond the typical two to four percent annual construction increases and based on the parallel estimates referenced above, Facilities Management believes the remaining balance of \$28 million will cover the future 260,000 square feet of designed tenant improvements. The 35,000 square foot balance comprises lower level mechanical and Central Plant space that would already be built out in the Tower Shell phase.

It should be noted that at the beginning of the GMP negotiation process with Sundt, the Tower Shell, Central Plant and sitework were initially estimated to cost \$48 million in direct cost alone. This direct cost estimate did not include contractor overhead or profit, nor did it include additional industry standard indirect costs such as builder's risk insurance, payment and performance bonds, general conditions or Arizona privilege tax. With these items added for the CMAR per rates pre-negotiated in the Tier One Agreement, the total initial cost to deliver the project was \$56.6 million. Through detailed negotiation and subcontractor and material pricing, the direct cost of the project has since been reduced from \$48 million to \$38 million, which includes nearly \$5 million in contingency.

Given the detailed plans and cost analyses conducted during the GMP process, it is unlikely any significant portion of the contingency will be needed for construction; however, such will not be known until the project has been constructed. Therefore, the GMP, including all subcontractor and material competitive pricing and all indirect costs listed above, has been established by Sundt at \$48 million, which could be as low as \$43 should the contingency not be required.

A detailed cost analysis has also been completed for the Tenant Improvements, and if included in the present GMP contract, would equal \$27 million. This includes additional contingency of approximately \$1.4 million; hence, the total amount needed in potential additional bonding could be as high as \$63 million. If contingency is not necessary, the amount could be as low as \$56 million, which is fairly close to the additional \$50 million allocation now authorized by the BAC for the project in a future bond election.

In preparation of the JJMCC Phase One GMP proposal, Sundt conducted an extensive subcontractor outreach, including prequalified local subcontractors for each trade, as well as Pima County/City of Tucson Small Business Enterprises (SBEs) with business categories relevant to this project. The following summarizes the subcontractors invited to bid on the project, the actual subcontractor bids received, and the tentative percentages of local Pima County businesses and registered SBEs included in the draft GMP proposal reviewed on September 8, 2011:

**Table 4**  
**Draft GMP Subcontractor Participation**

<b>Description</b>	<b>Amount</b>
Total subcontractors invited to bid on the project	447
Registered SBE subcontractors invited to bid on the project	108
Total subcontractor bids received	154
Total bids received from registered SBE subcontractors	26
Total Pima County subcontractors included in Draft GMP amounts	46.63 percent
Registered Pima County SBE subcontractors included in Draft GMP amounts	6.414 percent

Per our contract, Sundt's establishment of the GMP required the utilization of an open-book, competitive solicitation of all subtrades. As anticipated and evidenced by the attached Schedule of Values prepared by Sundt (Attachment 3), the County has received the benefit of both widespread subcontractor participation and market competitiveness. All scopes of work were required by contract to be competitively bid with Pima County Facilities Management actively reviewing all subcontractor bids received. In addition, Sundt Construction's GMP exceeds SBE prebid goals as established by the Pima County Procurement Department.

The County has reserved the right to utilize this same project delivery method for the ensuing tenant improvements, parking garage and balance of sitework, or if deemed advantageous, return to the more traditional hard-bid option.

It should be noted that the expertise, insight and value added by having a CMAR as an active contributor in the development and definition of Tower Shell construction versus tenant improvements was invaluable. As planned, the phased construction of the JJMCC will capture the extremely competitive market and result in no duplicative effort or remedial work to seamlessly progress from core and shell construction to tenant improvements.

### **XIII. Possible Future Bond Funding of Tower Shell and Central Plant**

As presented in this report, interim (or bridge) financing using Certificates of Participation, backed by both the County and City in proportion to their use of building, is used to finance the Tower Shell, Central Plant and Site Improvement costs not to exceed \$48 million and potentially as low as \$43 million. The question then is whether this bridge financing can be repaid if a future bond issue authorizes supplemental funding to this project, which was originally authorized by the voters in 2004. Such is likely; however, any repayments made by the City and County, in both principal and interest during the period of bridge financing, could not be recovered. If the project begins construction now and is funded in late 2011, it is likely three payments – possibly four – of the bridge financing 15-year term Certificates of Participation would have been paid and not recovered through General Obligation bond payments. It is likely that if the voters would authorize repayment, this bridge financing through a General Obligation bond and financing of the Tenant Improvements through such a bond authorization, the initial bridge financing payments, perhaps for three to four years, would not be refundable. Given straight-line principal and interest repayment, it is likely the principal amount of the initial indebtedness would have been reduced by \$10.2 million through four payments, thereby reducing the project cost to well within the BAC's supplemental authorization of \$50 million.

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**XIV. Actions Necessary for Award of a Guaranteed Maximum Price Contract for Construction of the Tower Shell, Central Plant and Site Improvements.**

Action by both the City and County regarding this matter is necessary by early December 2011, primarily because Sundt, and their 154 subcontractors and suppliers, have agreed to guarantee their pricing for 120 days after August 16, 2011, which is December 16, 2011.

CHH/mjk

**Attachments**

- c:   The Honorable Sarah Simons, Presiding Judge, Superior Court  
      The Honorable Keith Bee, Presiding Judge, Pima County Consolidated Justice Court  
      The Honorable Antonio Riojas, Presiding Magistrate, Tucson City Court  
      Joint Court Complex Management Team Members  
      Lisa Royal, Administrator, Pima County Consolidated Justice Court  
      Joan Harphant, Administrator, Tucson City Court  
      Reid Spaulding, Director, Pima County Facilities Management  
      Tony Larrivee, Administrator, City of Tucson Facilities Management